In the High Court of Judicature at Madras

Dated 17.03.2005

Coram

The Honourable Mr.Justice S.R.SINGHARAVELU

Criminal Original Petitions No.6140 and 7352 of 2003
and Crl.M.P.No.2639 of 2003

Dr.P.Vijayakumar ..Petitioner in both petitions

..vs..

M/s.Tata Finance Ltd.,
Kasi Arcade, 3rd Floor,
116, Thiyagaraya Road,
T.Nagar, Chennai-17
represented by N.K.Vasan ..Respondent in both petitions

Criminal Original Petitions filed under section 482 of Criminal Procedure Code, to call for the records relating to C.C.7129 and 7128 of 2002 respectively on the file of XVII Metropolitan Magistrate, Saidapet and quash the same.

For Petitioner : Mr.V.A.Shanthaanam
For Respondent : Mr.Walter Solemon

COMMON ORDER

These criminal original petitions are filed to quash the proceedings in C.C.7129 and 7128 of 2002 respectively on the file of XVII Metropolitan Magistrate, Saidapet, which were for an offence under section 138 of Negotiable Instruments Act.

2. Counsel for the petitioner / accused pointed out that the two complaints contemplated seven bounced cheques and they are cheque Nos.224697 dated 01.10.2001, 224698 dated 01.11.2001, 224699 dated 01.12.2001, 224700 dated 01.01.2002, 224701 dated 01.02.2002, 224702 dated 01.03.2002 and 224703 dated 01.04.2002 drawn on Union Bank of India, Mylapore, Chennai-4. They were said to have been issued by the petitioner/accused to M/s.Tata Finance Limited, the respondent / complainant towards payment of instalments due under Hire Purchase Agreement between the parties. Those cheques were bounced for insufficient funds in the said account of the petitioner / accused. The complaints were filed on 08.05.2002.

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3. Counsel for the petitioner/accused further submitted that there were notices of demand under section 138 of Negotiable Instruments Act, issued on various dates for the bouncing of the respective cheques. Those notices were found dated 09.10.2001, 07.12.2001, 09.01.2002, 07.02.2002, 04.03.2002 11.11.2001 and 08.04.2002 respectively shown to have been received on the ensuing day of its issue. Therefore, the complaints in accordance with provision of Section 138 of Negotiable Instruments Act, ought to have been filed on the dates earlier than the actual date of filing, namely, 08.05.2002. Since the complaints were not filed well within time, the petitioner seeks quashing of the proceedings initiated under the said complaints dated 08.05.2002.

4. Counsel for the respondent / complainant submitted that if only the notice was one shown to have been issued under section 138 of Negotiable Instruments Act, the above argument may hold good and since the above mentioned notices were not issued under section 138 (b) of Negotiable Instruments Act and when they were mere letter of cancellation of the receipt, 45 days for filing complaint cannot be reckoned as per provision of said Act from the dates of such notices.

5. On a careful perusal of the above said notice of first demand dated 09.10.2001, true that it is found in the following lines;

> "Now we call upon you to pay by Cash/DD/Pay order towards the following:
>
> In lieu of Cheque return : Rs.26,200.00
> Bank charges : Rs.200.00"

It is also true that, what is required to be paid by way of demand is the concerned amount found in the above said respective cheques.

6. To see whether these notices were the statutory notices under section 138(b) of Negotiable Instruments Act, the said provision has to be looked into and proviso to section 138 runs as follows:

> "PROVIDED that nothing contained in this section shall apply unless-
> (a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier.
> (b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, (within thirty days) of the receipt of information by him from the bank regarding the return of the cheque as unpaid, and

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(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation: For the purpose of this section, "debt or other liability" means legally enforceable debt or other liability".

As per the above provision, the statutory notice shall be in writing issued within the particular period of the "receipt of information by him from the bank regarding the return of the cheque as unpaid". It pre-supposes to contain the date of bouncing and the date of information of bouncing received by the payee and of course with the fact of return of cheque as unpaid.

7. Notices issued for the first time by the payee as mentioned above do indicate only the fact of return of cheque as unpaid for insufficient funds; but it mentioned neither the date of bouncing nor date of receipt of such information by the payee from the bank. As these two vital information are not found in the notices issued by the payee for the first time, of course with a demand amount in particular as mentioned in the cheque, those notices could not be called as statutory notices issued under the above provision of law. This has been fortified in M/s.MAYFAIR KNITTING INDUSTRIES LTD .. VS.. MR.G.P.VIJAYAKUMAR. M/s. RAINBOW CREATIONS PRIVATE LTD, ETC., (2002-2 L.W.(Crl.) 918), in which it is observed as follows:

"In my view, the notice dated 28.1.1977 does not satisfy the requirements of Clause (b) of Section 138 of the Act. A reading of the notice, which I have extracted earlier, clearly shows that the petitioner was only informing M/s.Rainbow Creations of his intention to initiate legal action if the amount is not paid and initiating legal action includes issuance of a notice under Clause (b) of Section 138 of the Act. In short, by his letter dated 28.1.1977, he has only informed M/s.Rainbow Creations that he will initiate action by referring the matter to the legal department and under the circumstances, it has to be only held that the letter dated 28.1.1977 cannot be treated as a notice as contemplated under Clause (b) of Section 138 of the Act".

8. Similar view was taken in the decision reported in PADMINI POLYMERS LTD., VS.. UNIT TRUST OF INDIA (2003(1) MWN (Cr.) DCC (Del.) 38), which is as follows:

"So far as the letter dated 5.7.2001 which is being used as sheet anchor by the petitioner is concerned it cannot by any stretch of imagination be termed as notice served upon the respondents as contemplated under Section 138 of the Act. Simply because a reference was given for initiating proceedings under S.138 of the Act does not give a colour of notice as contemplated under Section 138 of the Act. Through this letter, only the fact that the cheques have

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been dishonoured was brought to the notice of the petitioners calling upon them to make the payment immediately of the outstanding dues. It was not a legal notice whereby the petitioners were called upon to make the payment within 15 days of the receipt of said notice as contemplated under sub-clause (c) of Section 138 of the Act".

9. Since particulars of facts as required under the proviso to Section 138 of Negotiable Instruments Act are not found contained in the notices issued by the complainant, at the first instance after bounding of cheque, they cannot be called as notices issued in confirmity with such provision of law and therefore it could not be termed as a statutory notice. As they were not found as notices issued under section 138 of Negotiable Instruments Act, cause of action cannot be said to have arisen from such notices. Therefore, the contention of the counsel for the petitioner / accused that time shall be reckoned from the date of issue of such notice in order to make the present complaints as invalid is unacceptable. There is no sufficient ground to quash the proceedings before the trial court.

10. For the reasons stated above, both the criminal original petitions are dismissed. Consequently, connected Crl.M.P.is also dismissed.

17.03.2005

gl

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The XVII Metropolitan Magistrate,
Saidapet,
Chennai-15.

2. -do- Thro' The Chief Metropolitan Magistrate
Egmore, Chennai-8

2 ccs to Mr.Walter Solemon, SR.Nos.12973, 12974

hpr (co)

dv

Crl.O.P.Nos.6140 and 7352 of 2003

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